

#### **§ 4.1350**

(e) Not later than 30 days from the filing of a petition for review under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in §§ 4.1273–4.1276 of this part are applicable. If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5 of this part.

(g) Payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

REQUEST FOR HEARING ON A PRELIMINARY FINDING CONCERNING A DEMONSTRATED PATTERN OF WILLFUL VIOLATIONS UNDER SECTION 510(c) OF THE ACT, 30 U.S.C. 1260(c) (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS)

SOURCE: 52 FR 39526, Oct. 22, 1987, unless otherwise noted.

#### **§ 4.1350 Scope.**

These rules set forth the procedures for obtaining review of a preliminary finding by OSM under section 510(c) of the Act and 30 CFR 774.11(c) of an applicant's or operator's permanent permit ineligibility.

[67 FR 61511, Oct. 1, 2002]

#### **§ 4.1351 Preliminary finding by OSM.**

(a) If OSM determines that an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit, OSM must serve a preliminary finding of permanent permit ineligibility on the applicant or operator.

(b) OSM must serve the preliminary finding by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The preliminary finding must specifically state the violations upon which it is based.

[67 FR 61511, Oct. 1, 2002]

#### **43 CFR Subtitle A (10–1–08 Edition)**

#### **§ 4.1352 Who may file; where to file; when to file.**

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of permanent permit ineligibility.

(b) The request for hearing must be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800), within 30 days of receipt of the preliminary finding by the applicant or operator.

(c) Failure to file a timely request constitutes a waiver of the opportunity for a hearing before OSM makes its final finding concerning permanent permit ineligibility. Any untimely request will be denied.

[67 FR 61511, Oct. 1, 2002]

#### **§ 4.1353 Contents of request.**

The request for hearing shall include—

(a) A clear statement of the facts entitling the one requesting the hearing to administrative relief;

(b) An explanation of the alleged errors in OSM's preliminary finding; and

(c) Any other relevant information.

#### **§ 4.1354 Determination by the administrative law judge.**

The administrative law judge shall promptly set a time and place for and give notice of the hearing to the applicant or operator and shall issue a decision within 60 days of the filing of a request for hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

#### **§ 4.1355 Burden of proof.**

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit.

[67 FR 61511, Oct. 1, 2002]